Wisdom Industries, Inc. *and* Construction and General Laborers' Union, Local 368, AFL-CIO *and* John Mano. Cases 37-CA-1587 and 37-CA-1644

September 14, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 11, 1981, Administrative Law Judge Gordon J. Myatt issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Wisdom Industries, Inc., Honolulu, Hawaii, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] No exceptions were filed to the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(5) by refusing to sign a written agreement embodying the terms and conditions of employment negotiated with the Union on October 26, 1979.

Member Jenkins would compute the interest due on backpay in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146, 148 (1980). Inasmuch as the Administrative Law Judge rejects Respondent's defenses to the discharge of Mano as unworthy of belief, the only genuine motive for the discharge was Mano's union activity and, in Member Jenkins' view, *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), is irrelevant and he therefore does not rely on it.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain collectively in good faith with Construction and General Laborers' Union, Local 368, AFL-CIO, as the exclusive bargaining representative of the employees in the unit set forth below by refusing to sign the collective-bargaining agreement embodying the terms and conditions of employment on which we reached agreement with the Union on October 26, 1979.

WE WILL NOT discharge employees because they assist or support the Union or engage in other protected activities, or discourage other employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL sign the written contract embodying the terms and conditions of employment agreed upon with the Union on October 26, 1979, and WE WILL give retroactive effect to the terms and conditions of the agreement to July 1, 1979.

WE WILL make whole our employees in the following appropriate unit for any losses they may have suffered by reason of our failure to sign the collective-bargaining agreement with the Union. The appropriate unit is:

All full time and regular part-time employees including fabricators, truck drivers and warehousemen; excluding office clerical employees, management employees, guards and/or supervisors as defined in the Act.

WE WILL offer John Mano immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, discharging if necessary any employee hired to replace him, and WE WILL make him whole for any loss of earnings or benefits he may have suffered as a result of our unlawful discrimination against him, with interest.

WISDOM INDUSTRIES, INC.

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon a charge filed on December 5, 1979,[1] in Case 37-CA-

[1] Unless otherwise indicated, all dates herein refer to the year 1979.

1587 by Construction and General Laborers' Union, Local 368, AFL-CIO, hereinafter called the Union, and a charge filed on April 11, 1980, in Case 37-CA-1644 by John Mano, an individual, against Wisdom Industries, Inc., hereinafter called the Respondent, an order consolidating the cases and a consolidated amended complaint and notice of hearing was issued on June 24, 1980. The consolidated complaint alleges that the Union has been certified as the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and, after a series of negotiating sessions, the Union and the Respondent reached agreement on the terms of a collective-bargaining contract. Further, that the Respondent refuses to execute and implement the terms of the agreement reached by the parties. Finally, the consolidated complaint alleges that the Respondent unlawfully discharged John Mano because of his activities on behalf of the Union. It is asserted that this conduct on the part of the Respondent violates Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (hereinafter called the Act), 29 U.S.C. §151, *et seq.* The Respondent's answer admits certain allegations of the complaint, denies others, and specifically denies the commission of any unfair labor practices.

A hearing was held in this matter in Honolulu, Hawaii, on September 23 and 24, 1980. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material and relevant evidence on the issues involved. Briefs have been submitted and have been duly considered.

Upon the entire record in this case, including my observation of the witnesses and their demeanor while testifying, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent is, and has been at all times material herein, a Hawaii corporation with its principal office and place of business located in Honolulu, Hawaii. The Respondent is engaged in the business of fabrication and wholesaling rubber and other products. During the past calendar year, the Respondent received gross revenues in excess of $500,000 and purchased materials and supplies valued in excess of $50,000 directly from suppliers located outside the State of Hawaii. The pleadings admit, and I find, that the Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Construction and General Laborers' Union, Local 368, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Organizing of the Respondent's Employees*

The Union began its organizing campaign among the Respondent's employees in February 1979. Melvin Cremer, a field representative of the Union, contacted John Mano, who was then the driver of the Respondent's largest piece of equipment—a tractor-trailer. Mano was given blank authorization cards by Cremer and began to solicit signatures from his coworkers. The Respondent's facilities in Honolulu are located in two places. One is a warehouse and storage area located in what is designated as Campbell Industrial Park. The Respondent's principal office and other warehouse facilities are located in an area known as Sand Island, which is some 20 miles distant from the industrial park. Mano's duties as a driver of the Respondent's tractor-trailer caused him to go to both locations frequently, and, while there, he began to solicit employees to sign authorization cards for the Union. Mano testified that on occasions he solicited employees' signatures in front of Randy Komae, son of the Respondent's president and chief executive officer, Archie Komae. He also stated that he offered a card to a nephew of Komae who was working at the Sand Island location, but did not receive a favorable response.

The Union filed a petition for an election with the Board's offices and an election was conducted on March 21. On March 29, the Union was certified as the exclusive bargaining representative of the Respondent's employees in an appropriate unit.[2]

After the certification of the Union, Cremer visited Respondent's Campbell Industrial Park facility quite frequently to discuss matters relating to the employment conditions of the unit employees with Mano. Cremer testified that Archie Komae asked him to notify the Respondent's officials in advance of his visits so as not to disrupt the Respondent's operations while the employees were working. Cremer stated he made it a practice to inform Douglas Kema, the Respondent's division manager at the Campbell facility, before coming on site to speak with Mano.[3] In addition to visiting the Respondent's facility to talk with Mano, Cremer stated he would call the Respondent's offices two or three times a week and leave messages for Mano to contact him. Because of the frequent calls, the Respondent's office girl would often ask if he were the "union guy" when he sought to leave messages for Mano. Cremer testified, however, that the Respondent's officials were never formally notified by the Union that Remalo or Mano had been appointed union steward for the bargaining unit.

B. *The Negotiations for a Collective-Bargaining Agreement*

According to the testimony of Cremer, after the Union won the election, Archie Komae stated that he did not know anything about negotiating a labor agreement and

[2] The unit was described as:

All full-time and regular part-time employees including fabricators, truck drivers and warehousemen; excluding office clerical employees, management employees, guards and/or supervisors as defined in the Act.

[3] It is evident from the testimony that Mano was the principal employee organizer for the Union at the Respondent's facilities. Although an older employee, Manny Remalo was appointed shop steward at Mano's suggestion after the election, Mano became the steward in October 1979, when Remalo quit his job with the Respondent. Nevertheless, it is apparent that Cremer relied on Mano and relayed information to the employees through him even during Remalo's tenure as union steward.

would have to get an attorney to represent him. Cremer stated Komae asked if he knew of any attorneys, but Cremer declined to recommend one.

Komae testified that he met with Cremer at the Respondent's Sand Island office after the election. According to Komae, the parties discussed how they were going to go about negotiating a collective-bargaining agreement. Since he had no one representing him, Komae stated he told Cremer, "You will be hearing from us." Thereafter, according to Komae, he contacted the law firm which represented the Respondent's corporate interests and the labor negotiations were turned over to Mark Bleuenstein of that same firm.

Norman Janicki, Jr., a field representative, was the coordinator of the Union's negotiation efforts with the Respondent. Janicki testified that he consulted with Cremer and drafted a copy of a collective-bargaining agreement which he submitted to Bleuenstein in mid-May. Janicki stated that, while he had been advised by Cremer that Bleuenstein was representing the Respondent in the negotiations, he had never received any formal notification to this effect from Komae nor had he ever received any statement from the Respondent limiting Bleuenstein's authority. An initial meeting was set up between the union representatives and Bleuenstein in June and the parties went over the Union's proposals. Janicki testified that there were several meetings with Bleuenstein over a period of months, but that Komae only attended one meeting. According to Janicki, Komae traveled extensively to the mainland and Bleuenstein was the only one who appeared on behalf of the Respondent at most of the negotiations. Sometime in early October, Bleuenstein advised the union representatives during a negotiation session that he was going to have to go into the hospital to have surgery. He introduced Peter Wheelon, another member of his law firm, to the union representatives and stated that Wheelon was going to handle the negotiations for the Respondent during Bleuenstein's hospitalization. Janicki testified that the union representatives were upset and concerned because the negotiations had covered an extended period of time and a new attorney was being introduced to proceed on the Respondent's behalf. Shortly after this meeting the Union requested some information of the Respondent. Wheelon stated he sought to get the information so that he could provide it to the Union, but in the interim the union representatives contacted the Federal mediator to set up a meeting between the parties.

On October 26, a meeting was held at the offices of the Federal mediator. Wheelon and Gary Kuioka, the Respondent's controller, attended the meeting on behalf of the Respondent.[4] Janicki, Cremer, and Saguibo, all field representatives, attended on behalf of the Union. The testimony of Janicki and Wheelon indicates that the parties were engaged in negotiations with the mediator for an entire day and that all items of a collective-bargaining agreement were discussed and finally agreed upon. At the conclusion of the meeting, all of the parties agreed with the mediator that they had arrived at a collective-bargaining agreement. Wheelon testified that the Union was to draft a document embodying the terms agreed upon at the meeting and after he had reviewed it, he was to deliver it to the Respondent's president and controller for execution. Janicki testifed that the mediator asked all of the parties whether or not they had an agreement and they all concurred that an agreement had been reached. According to Janicki, Kuioka had nodded his head to indicate assent when the mediator posed this question. Janicki stated that at the conclusion of the meeting all of the parties shook hands and left.

Subsequent to the meeting on October 26, Janicki put the terms of the agreement in a written document. He stated that he was in touch with Wheelon concerning grammatical changes and minor changes in language and, after the document was completed sometime in November 1979, Wheelon came over to the Union's headquarters and picked up a copy to review and deliver to the Respondent.[5] Janicki testified that after a period of time had expired and he had not received a signed copy of the agreement, he called Wheelon to find out what happened to the document. According to Janicki, Wheelon stated he no longer represented the Respondent and the Union would have to go directly to Komae to inquire about the document. Wheelon testified that, when Janicki called him about the contract, he told the union representative that it was in the hands of his client. Wheelon stated he never received a copy of the executed agreement from Komae. Janicki testified that, after speaking with Wheelon, he called Komae directly and was told that the union representatives would have to talk with Jimmy Pflueger, who Komae indicated was the apparent financial backer of the Respondent.

Janicki made an appointment to meet with Pflueger at union headquarters. He testified that when Pflueger came in he was accompanied by four other "wide-shouldered, unsmiling" individuals. Janicki stated that Pflueger introduced these individuals as also having a financial interest in the Respondent. Two of the persons accompanying Pflueger were introduced to Janicki as the Perry brothers and one was known as "Black" Perry. Janicki testified that Pflueger said he did not like the collective-bargaining agreement and now that the parties had met with the mediator they could start negotiating.[6] Janicki refused to engage in further negotiations and stated that the parties had an agreement which only required the signature of a person who could bind the Respondent. Black Perry and Pflueger stated, according to Janicki, that they would close down the Respondent's facilities and the employees would be without jobs. Black Perry also told Janicki that if the Union put up a picket line, he knew how to "bust it." Janicki stated that Black Perry said that the Respondent could not live with the negotiated agreement and that he never heard of a contract that could not be renegotiated. Janicki steadfastly refused to renegotiate the agreement and maintained that the parties had agreed upon the terms for the contract. The only thing that remained was the formality of signing the

[4] Wheelon testified Kuioka was present because he had requested that the Respondent provide him with someone to attend the meeting who had authority to negotiate an agreement.

[5] A copy of the document picked up by Wheelon was admitted into evidence as G.C. Exh. 4.

[6] Pflueger was not called as a witness in these proceedings.

document. He told Pflueger that, if the Respondent were not going to sign the contract, the Union's only alternative was to file charges with the Board. Janicki testified that at this point Pflueger and those accompanying him turned and left and Pflueger stated, "Well, then I'll see you in court."

Archie Komae testified that after the Respondent retained Bleuenstein from the offices of the corporate attorney, he informed the attorney that he reserved the right of approval over any matters negotiated with the Union. Komae acknowledged that he did not tell the union representatives that he had reserved this right of approval. Komae stated that he attended one meeting with the union representatives in Bleuenstein's office. After this initial meeting, Komae never appeared at the negotiating sessions but stated that Kuioka attended the meetings as the representative of management. Komae further stated that it was his understanding that the meeting with the Federal mediator was to discuss wages and other economic benefits. He also indicated that none of the noneconomic terms had been accepted by him at the time of the meeting with the mediator. Komae testified that, when he received a final copy of the collective-bargaining agreement, he had to call Wheelon to find out what the document purported to be. According to Komae, none of the terms had ever been discussed with him or Pflueger.[7] Komae stated that he then delivered a copy of the agreement to Pflueger and left the matter in Pflueger's hands.

C. *The Discharge of Mano*

Mano testified that the Respondent's officials were aware of his activities on behalf of the Union. He stated that Edwin Souza, his immediate supervisor and the Respondent's distribution manager, told him both before and after the election that the employees would not get the raises or have better benefits, because of you guys bringing in the Union. He also stated that, he frequently met with Cremer on the job and, management officials as well as relatives of Komae were aware of these meetings.

On April 18, 1980, Mano brought a trailer to the Campbell Park site from Sand Island. He was preparing to back the trailer into a loading area. He either did not see or misjudged the distance between the back of his trailer and a forklift truck being operated by another employee. The forklift operator, David Keopuhiwa, was backing out of the same location which Mano intended to back the trailer. As Mano put his truck into reverse, he struck the forklift as it was backing out. There is testimony that there was extensive damage to the forklift although no injury was suffered by Keopuhiwa. Kema, who was acting as manager of the Campbell operation that day, came on the scene and instructed Mano to remain there while he got in touch with Kuioka. Mano observed Kema going into the office attempting unsuccessfully to contact Kuioka by phone. Kema subsequently sent Mano out on his regularly scheduled runs but at noon called him in to fill out an accident report. When Mano finished the report, Kema informed him that he was discharged because he had too many vehicle accidents while employed by the Respondent.

Mano testified that, while he had other accidents with equipment at the Respondent's facilities, there was never an accident which involved another vehicle. He acknowledged on cross-examination that in November 1978 a load shifted and fell off a truck he was driving. He also stated that, in June 1979, he backed into a building at the warehouse and, in November of that same year, dropped some pipes he was unloading with a forklift truck. He further acknowledged that, in December 1978, he backed his truck into a building. According to Mano, accidents frequently happened with the Respondent's equipment and that other employees had accidents as severe or more severe than he had on April 18, but they were never discharged or disciplined to his knowledge. Mano stated that, while he was employed by the Respondent, Souza hit a tree with one of the Respondent's trucks and caused extensive damage. Another employee, Youshimura, demolished a company-owned Pinto. Another employee, according to Mano, was learning to drive a flatbed truck and struck a passenger car in the process. Mano further testified that he had never been suspended or reprimanded for any of the accidents he had prior to April 18.

Souza testified that he was in the hospital recovering from injuries suffered in an automobile accident at the time Mano collided with the forklift truck. He stated that Kema called the hospital and informed him about Mano's accident. According to Souza, Kema had looked into Mano's personnel file to check his past record of accidents. Souza stated he and Kema then arrived at a decision to fire Mano. Souza further stated that, while other employees had been involved in accidents with company equipment in the past and were not discharged, none had as many accidents as Mano, nor did the damages resulting from their accidents cost as much as those caused by Mano. Souza asserted that in the past he had warned all employees involved in accidents, including Mano, that if they continued to have accidents they would be terminated. Souza denied any knowledge of Mano's activities on behalf of the Union and stated this was not a factor in the decision to discharge him.

Kema testified he was angry when he went into the dock area to see about the accident on April 18. He stated the employees were laughing and seemed to take the incident lightly. He tried to contact Kuioka but was unsuccessful. He then called Souza at the hospital and discussed the accident with him. According to Kema, Souza suggested that he pull Mano's personnel file and look at the employee's past record of accidents. Kema did so, and he and Souza agreed that Mano should be terminated. Kema acknowledged that he had never pulled an employee's personnel file in the past. He also admitted that he had heard rumors about Mano's involvement with the Union, but denied that he and Souza took this into consideration in deciding to terminate Mano.

Kuioka stated that he was informed about Mano's accident by Kema. According to Kuioka, Kema reported

[7] Komae identified Pflueger as the financial backer of the Respondent's firm. He stated that Pflueger was the corporate secretary and treasurer of the Respondent.

that he had discussed the incident with Souza and they had decided to fire Mano. Kuioka testified he concurred with the decision after reviewing Mano's personnel file. He acknowledged that he had never pulled an employee's personnel file in the past in order to determine whether to discharge an employee. However, Kuioka told Kema to delay discharging Mano until he, Kuioka, had an opportunity to sit with Kema and discuss the matter. Kuioka stated this was done later in the day and Mano was fired. Kuioka denied that Mano's union activities entered into management's decision to discharge him.

Concluding Findings

The General Counsel argues that the Respondent and the Union had reached complete agreement on the terms of a collective-bargaining contract when the parties concluded their negotiations with the assistance of the Federal mediator on October 26, 1979. The Respondent contends, however, that Wheelon, as well as the attorney he replaced during the negotiations, did not have authority to bind the Respondent in the negotiating process, and that the Respondent's president reserved the right of approval over any matters agreed upon by the negotiators.[8] The evidence in the record does not, in my judgment, support the Respondent's contentions.

It is apparent that, after the election in March, Komae chose to bargain with the Union through an attorney because he had no experience in negotiating a collective-bargaining agreement. Thus, Cremer credibly testified that Komae told him after the Union won the election that he knew nothing about negotiating labor contracts and would have to get an attorney. Indeed, Komae testified he had no one to turn to and he told the union representative, "You will be hearing from us" when asked about negotiating a contract. After he retained the services of the Respondent's corporate attorneys and Bleuenstein commenced negotiations on the Respondent's behalf, Komae only attended one bargaining session during the entire time the parties were engaged in negotiations between June and October 1979. Therefore, he made it evident to the union representatives that he was relying on Bleuenstein and his subsequent replacement, Wheelon, to negotiate an agreement on behalf of the Respondent. By his own admission, Komae never informed the union representatives that he was limiting the authority of his attorneys by reserving the right to approve any terms they agreed upon during the bargaining sessions. Having failed to do so, Komae clearly gave the union representatives every reason to believe that the Respondent's attorneys had full authority to conduct the negotiations and enter into a binding agreement. *Deluxe Poster Co., Inc., d/b/a Johnson Printers*, 238 NLRB 335, fn. 2 (1978); *Adams Iron Works, Inc.*, 221 NLRB 71 (1975).

I find that by this conduct, Komae had vested his attorneys with at least apparent authority, if not actual authority, "to enter into an understanding that would be embodied into a written agreement and signed." *N.L.R.B.* v. *Donkins Inn, Inc.*, 532 F.2d 138, 141 (9th Cir. 1976). Therefore, when Wheelon, substituting for Bleuenstein, and the union representatives reached agreement on the terms of the contract and assured the mediator that they had an agreement, the parties entered into a binding agreement which only remained to be reduced to writing and executed. *N.L.R.B.* v. *Donkins Inn, supra; Lozano Enterprises* v. *N.L.R.B.*, 327 F.2d 814 (9th Cir. 1964). Accordingly, when Janicki made the language changes in the final document and these changes were reviewed and approved by Wheelon, the Respondent's president was then under an obligation to sign the agreement and implement its terms.

Moreover, it is apparent that Komae and Pflueger, the Respondent's financial backer, felt a valid agreement had been negotiated but were simply dissatisfied with its terms. When Pflueger and his associates met with Janicki, the main thrust of their objections was that the contract terms were too generous and would have to be renegotiated. Indeed, Black Perry told Janicki he never heard of a contract "that couldn't be renegotiated." It becomes evident, therefore, that the Respondent's representatives were conceding a valid agreement had been negotiated, but they were not prepared to accept its terms.

In light of the above, I find that an agreement was reached by the negotiators and the Respondent was under a duty to execute the contract embodying the terms of the agreement when requested to do so by the Union. In refusing to sign the written contract upon request of the Union, the Respondent breached its statutory obligation and violated Section 8(a)(5) and (1) of the Act.

Regarding the discharge of Mano, I also find that the Respondent has committed further violations of the Act. There is no question whatsoever but that Mano was the principal union advocate among the employees. Prior to the election he was the person who solicited employee signatures on authorization cards and set up meetings between the employees and the union representatives. After the election, although he was not the initial union steward, Mano nevertheless remained the chief contact for the Union at the Respondent's facilities. Cremer credibly testified that he visited Mano during working hours at the Respondent's premises after getting permission from the supervisors to talk to the employee. He also left telephone messages at least two or three times a week with the Respondent's personnel requesting that Mano contact him. In spite of the open and unconcealed manner in which the union representative maintained contact with Mano at the Respondent's operations, Kema testified that he had no direct knowledge of Mano's activities on behalf of the Union and Souza disclaimed any knowledge whatsoever of the employee's union activities. For this reason, I discredit their testimony in this regard and

[8] The Respondent's answer also denies that the Union has been the exclusive collective-bargaining representative of the unit employees since March 29, 1979. This contention is patently without merit since the Union was certified by the Board on that date and the certification was never contested by the Respondent. It is well settled that a newly certified union enjoys an irrebuttable presumption of majority status for at least a year, absent unusual circumstances not present here, and a rebuttable presumption thereafter or at the expiration of an initial collective-bargaining agreement. Cf. *Enidine, Inc.*, 251 NLRB 1262, fn. 2 (1980). Since the Respondent has offered no evidence whatsoever to controvert either presumption, its denial of the Union's exclusive representative status must be rejected.

find they were deliberately denying knowledge of Mano's union involvement in order to absolve themselves of any wrongdoing when they terminated the employee. I likewise place little credence to their statements, or that of Kuioka, that Mano's union activities were not considered or discussed when the decision was made to discharge him.

When considered in this context, the Respondent's asserted justification for discharging Mano—that he had too many costly accidents—becomes less persuasive and is indeed suspect. This is especially true since the prior history of management's treatment of employees involved in vehicular accidents shows that no employee was ever fired for having an accident. This is the case even though the record discloses that other employees were involved in more than one accident and the damages were as great as, if not greater in some instances than, that caused by Mano.

Considering all of these factors, I find the record warrants the conclusion that, had Mano not been the principal activist for the Union at the Respondent's operation, he would not have been discharged on April 18. Rather, the past practice up to the time of this particular incident gives rise to a strong inference that he would have been verbally admonished and nothing more.

For these reasons, I find that the Respondent's discharge of John Mano violated Section 8(a)(3) and (1) of the Act. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

CONCLUSIONS OF LAW

1. The Respondent, Wisdom Industries, Inc., is an employer within the meaning of Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Construction and General Laborers' Union, Local 368, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit constitutes an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees including fabricators, truck drivers and warehousemen; excluding office clerical employees, management employees, guards and/or supervisors as defined in the Act.

4. Since March 29, 1979, the Union has been the duly certified and designated exclusive representative of the employees in the unit described above within the meaning of Section 9(a) of the Act.

5. By unlawfully refusing to execute the written contract embodying the terms and conditions of a collective-bargaining agreement reached with the Union on October 26, 1979, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

6. By unlawfully discharging employee John Mano on April 18, 1980, because he was the leading union activist at the Respondent's facilities and in order to discourage employees from engaging in activities on behalf of the Union, the Respondent has violated Section 8(a)(1) and (3) of the Act.

7. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent committed unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, it shall be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall be ordered to sign the written contract embodying the terms of the collective-bargaining agreement reached between it and the Union on October 26, 1979, and give retroactive effect to its terms to July 1, 1979. The Respondent shall also be ordered to make whole its employees for any loss of wages or other employee benefits they may have suffered as a result of the Respondent's failure to sign the collective-bargaining agreement. In addition, the Respondent shall be ordered to offer John Mano immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, discharging, if necessary, any employee hired to replace him. The Respondent shall also make Mano whole for any loss of earnings or benefits he may have suffered by reason of the Respondent's unlawful conduct against him. Interest on all wages or benefits due herein shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[9] However, nothing herein shall be construed as requiring the Respondent to revert to wage or benefit levels below those currently in force. *Seacrest Convalescent Hospital*, 230 NLRB 23 (1977); *Harold W. Hinson, d/b/a Hen House Market No. 3*, 175 NLRB 596 (1969).

Upon the foregoing findings of fact, conclusions of law, the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[10]

The Respondent, Wisdom Industries, Inc., Honolulu, Hawaii, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with Construction and General Laborers' Union, Local 368, AFL-CIO, by refusing to sign the written contract embodying the terms of the collective-bargaining agreement reached by the parties on October 26, 1979.

(b) Discharging employees because they assist or support the Union or engage in other protected activities, and in order to discourage other employees from engaging in such activities.

[9] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[10] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Forthwith sign the written contract embodying the terms of the collective-bargaining agreement which the parties reached on October 26, 1979. Upon execution of said agreement, give retroactive effect to the provisions thereof to July 1, 1979, and make whole its employees for any losses they may have suffered by reason of the Respondent's failure to sign the agreement in conformity with the section of this Decision entitled "The Remedy."

(b) Offer to John Mano immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges. In addition, make this employee whole for any loss of wages or benefits he may have suffered by reason of the discrimination against him in conformity with the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary and relevant to determine the amounts owing under the terms of this recommended Order.

(d) Post at its Columbus Industrial Park and Sand Island facilities located in Honolulu, Hawaii, copies of the attached notice marked "Appendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 20, after having been duly signed by the Respondent's authorized representative, shall be posted immediately upon receipt thereof and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 20, in writing, within 20 days of the date of this Order, what steps the Respondent has taken to comply herewith.

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[11] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" all read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."